this Notice, I reserve the right without prejudice to any other rights under the said Contract to determine the said Contract, in which event I shall advise the Central Provident Fund Board of their rights under the provisions of clause 34(d) of the said Conditions of Contract.

Dated this 25th day of October 1974.

Signed
Superintending Officer.

c.c.
Chairman, CPF Board
General Manager, CPF Board
DPW

ANNEX II

A.R. REGISTERED

M/s Ho Bock Kee General Contractor
597A Geylang Road
Singapore 14.

WHEREAS:

(i) By a Contract dated the 4th June 1971 and made between you, Ho Bock Kee and the Central Provident Fund Board it was agreed that you would construct the Central Provident Fund Building at Robinson Road for the consideration therein stated.

(ii) By Condition 34(a) of the conditions of the said contract the Superintending Officer is empowered to terminate the said contract after giving you, by registered post, notice of default and upon your failure to comply therewith within seven days of the date of the said notice.

(iii) Notice of Default was served upon you and you have failed to comply with such notice.

NOW TAKE NOTICE that I the Chairman acting under powers reserved by Condition 34 of the said contract hereby terminate the said contract with effect from the date of this notice.

Dated the 2nd day of November, 1974.

WILLIAM CHENG
Chairman,
Central Provident Fund Board.

ANNEX III

34(b) Bankruptcy or Assignment. — If the Contractor

(i) commits an act of bankruptcy; or

(ii) becomes insolvent or compounds with or makes any assignment for the benefit of his creditors; or

(iii) assigns or sub-contracts the Contract or any portion thereof without the written permission of the Superintending Officer;

then, and in any such event, the Superintending Officer may without prejudice to any other rights herein contained by a notice sent by registered post determine this Contract.

(c) The Board shall be entitled to determine the employment of the Contractor under this Contract and to recover from the Contractor the amount of any loss resulting from such determination, if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Contract with the Board, or for showing or forbearing to show favour or disfavour to any person in relation to this Contract or any other Contract with the Board, or if the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without the knowledge of the Contractor), or if in relation to this Contract or any other Contract with the Board the Contractor or any person employed by him or acting on his behalf shall have committed any offence under the Penal Code (Chapter 119) or Prevention of Corruption Ordinance (Chapter 121) or shall have abetted or attempted to commit such an offence or shall have given any fee or reward the receipt of which is an offence under the said Ordinances.

Solicitors: *Lee & Lee; Allen & Gledhill.*

A MALAYSIAN REPORTS

LAI KIM HON & ORS. v. PUBLIC PROSECUTOR*

[F.C. (Suffian L.P., Ibrahim Manan & Abdul Hamid F.JJ.) April 16, 17 & May 15, 1980]

[Kuala Lumpur — Federal Court Criminal Appeal No. 23 of 1978]

B *Criminal Law and Procedure — Voluntarily causing hurt to extort confession — Police officers assaulting suspect and causing his death — Sentence — Penal Code, ss. 34 & 330.*

Police — Allegation of brutality — Wide powers — Duty to protect public — Exercise of powers.

In this case the appellant, who were police officers, were convicted in the High Court with the offence of voluntarily causing hurt to extort a confession an offence under section 330 read with section 34 of the Penal Code. The first appellant C a Chief Inspector, was sentenced to 3 years' imprisonment, the second appellant to 18 months and the third and fourth appellants to 12 months each. They appealed against their conviction and sentence. The Public Prosecutor appealed against the sentence on the second, third and fourth appellants.

Held: (1) the learned trial judge had enough evidence before him which, if believed, would justify his finding the appellants guilty and the appeal court could not disturb his D finding;

(2) although this was a very serious case, the sentences on the second, third and fourth appellants (especially in comparison with the sentence on the first appellant against which no appeal had been brought) were not manifestly excessive or inadequate and it could not be said that the learned trial judge had proceeded on a wrong principle. The sentences must therefore be affirmed.

Case referred to:-

E (1) *Mahbub Shah* v. *King-Emperor* L.R. 72 I.A. 148.

HIGH COURT.

Wan Abdul Majid (Deputy Public Prosecutor) (*Zaki bin Tun Azmi* with him) for the Public Prosecutor.

Radzi Sheikh Ahmad (*Mat Noor* with him) for F the 1st, 2nd and 3rd accused.

Jagjit Singh for the 4th, 5th and 6th accused.

Cur. Adv. Vult.

Harun J.: In this case all six accused are police officers attached to Cheras Police Station, Kuala Lumpur and were jointly charged with committing culpable G homicide not amounting to murder under section 304 Penal Code read with section 34 of the same Code.

The facts are as follows:

Cheras Police Station is the headquarters of the 'C' Division of the Kuala Lumpur Police. 'C' Division includes Kg. Dato Keramat. In 1977 the Police received several reports from members of the public H living in Kg. Dato Keramat that their houses were broken into and articles stolen. The Police set about to stamp out this menace and the Crimes Prevention Branch of 'C' Division was deployed for this purpose. The function of this branch is to take measures to prevent the commission of preventable crimes which includes the rounding-up of suspects and interrogating I them.

At the material time, the Head of the Crimes Prevention Branch at Cheras Police Station was Chief Inspector Lai Kim Hon (the 1st accused). He had under his charge the following officers:

1 Detective Sergeant; 4 Detective Corporals; 12

* See note at [1980] 2 M.L.J. x.

Detective Police Constables; and 8 Special Rounds Police Constables.

The 3rd accused (Mahazan) and 4th accused (Harris) are two of the 12 Detective Police Constables; and the 5th accused (Joseph) one of the 8 Special Rounds Police Constables of the Branch. The 2nd accused (ASP Liew) is an Investigating Officer and the 6th accused (ASP Raja Bahruddin) is the Deputy Assistant Officer Commanding 'C' Division (Administration). Both are attached to Cheras Police Station but are not part of the Crimes Prevention Branch (CPB).

In the course of their investigations, the Police arrested Khairuddin bin Abdul Hamid (PW32) on June 14, 1977. He was interrogated and he implicated Noorazali bin Isahak (PW31). The Police arrested Noorazali on June 15, 1977. He too was interrogated and he in turn implicated Nordin bin Hamzah (the deceased).

Nordin was the son of Hamzah bin Abdul Jalil (PW12) in a family of 16 children all from the same mother. His father was a Sergeant in the Special Constabulary during the Emergency and since 1969 was employed as a Security Guard at the Development and Commercial Bank in Kuala Lumpur. Some of this large family lived in Kuala Lumpur and some at Cha'ah in Johor. Nordin was 16 years old at the time of his death. He left school at Cha'ah at the age of 14 years. After leaving school he lived in Kuala Lumpur with his father at the Pekeliling Flats for about 5 or 6 months. It was during this period that Nordin came to know Noorazali as they used to play football together at the padang by the flats and Noorazali's parents were known to Nordin's parents since both families moved into the Pekeliling Flats at the same time after the big floods in 1970. After the long visit to his father Nordin returned to Cha'ah and lived with his mother there. He earned a living as a frog-catcher which he sold to a Chinese for export to Singapore earning about $35 to $40 a day. Once every three months he accompanied his mother to visit his father in Kuala Lumpur staying about a week on each occasion. He continued to play football with Noorazali during such visits. His last visit to his father was about two weeks before his death.

On June 17, 1977 Noorazali accompanied the Police to Hamzah's house to point out Nordin whom he called 'Congo' because of his physical appearance. Neither father nor son was in the house but a relative suggested that Nordin could be either at Cha'ah or at his brother's house in Gombak. The Police went to Gombak. Hamzah was at the house and told the Police that Nordin had returned to Cha'ah. The Police knew him only as Congo but his father gave his real name and address at Cha'ah and also the registration number of the motor-cycle he was using. On June 18, 1977 at 9.20 a.m. Nordin was arrested at his house in Cha'ah. He was first taken to Cha'ah Police Station and at 11.50 a.m. the same day he was taken to Segamat Police Station. On arrival at Segamat, the Police there examined his person and found that he had no injuries nor did he complain of any sickness. He was kept in the lock-up and the following day at 2.50 p.m. Nordin was handed over to the Cheras Police "in good condition".

Nordin was brought to Cheras from Segamat in a police car driven by Sgt. Hamzah (PW8) and escorted by Cpl. Halidi and A3/Mahazan. They arrived at Cheras Police Station at about 6.40 p.m. On arrival Nordin was taken to the Detectives Room of the CPB. At 6.50 p.m. A3/Mahazan went to the lock-up and brought out Noorazali and Khairuddin and took them to the Detectives Room and pointing to Nordin asked Noorazali "Is this Congo?" to which Noorazali answered in the affirmative.

In the presence of Noorazali and Khairuddin, A3/Mahazan questioned Nordin if he committed housebreaking. He also said: "You better admit your crimes." Nordin denied committing such crimes whereupon A3/Mahazan beat him up with a rubber hose. Other police personnel also beat up Nordin with the rubber hose on this occasion but here the evidence is conflicting. According to Noorazali it was A6/Raja Bahruddin but according to Khairuddin it was A5/Joseph. Both Noorazali and Khairuddin were taken back to the lock-up at 7.30 p.m.

At about 7.10 p.m. the O.C. of 'C' Division, DSP Mohd. Ishak (PW13) instructed Det. Cpl. Halidi to detain Nordin at Pudu Police Station lock-up (as the Cheras Police Station lock-up was full) until the following day when he should be produced before a Magistrate for an order under section 117 Criminal Procedure Code. Nordin was brought to Pudu Police Station by Cpl. Halidi and A3/Mahazan arriving there at 7.30 p.m. Following routine police procedure before putting a person in the lock-up the police at Pudu Police Station (PW16, 17, 18 & 19) examined the body of Nordin and found fresh bruises on his body. This fact was recorded in the station diary Exhibit P12. Nordin shared the cell in the Pudu Police Station lock-up with one Lim Choon Leng (PW20). Lim said he saw fresh swelling marks and bruises on Nordin's back as the latter was not wearing a shirt. Nordin also lowered his trousers to show Lim bruises on his buttocks and at the back of his thighs. He told him that he had been beaten up but did not say who beat him up. Lim saw that Nordin could not sit and had to lie on his stomach. He was restless. At 9.10 p.m. on June 19, 1977 Nordin was taken out of Pudu Police Station by A1/Insp. Lai, A3/Mahazan and Cpl. Halidi (PW17 and item 5005 of Exhibit P16).

At 9.20 p.m. on June 19, 1977 A5/Joseph took out Khairuddin from Cheras Police Station lock-up (PW28; item 6556 of Exhibit P14) to the Detectives Room of the CPB. In the room he saw Nordin and accused 1, 2, 3, 4 & 5. Nordin was hanging from the window with his hands handcuffed to the window grill in the manner of a crucifixion. This is corroborated by the medical evidence which showed that there were deep pressure abrasions on both wrists the result of supporting the weight of the body. He was completely naked and facing out of the window. A1/Insp. Lai was beating Nordin with a rubber-hose from the midriff to the back of his knees. A1/Insp. Lai was followed by A2/ASP. Liew in beating Nordin with the rubber-hose. Nordin kicked backwards in pain and because of this his legs were cuffed to the window grill also. Then A5/Joseph started to beat

Nordin with the rubber-hose followed by A3/Mahazan and A1/Insp. Lai. Nordin was then brought down. Now facing the room with his hands cuffed to the window but standing on the ground A4/Harris kicked Nordin. Khairuddin then saw A6/Raja Bahruddin punch Nordin in the stomach. Nordin was screaming in pain. Other Police personnel entered the room but they only watched. Then Nordin stopped screaming. He was brought down. A1/Insp. Lai poured water over Nordin and made attempts to revive him but he appeared to Khairuddin to be lifeless. Khairuddin was taken back to the lock-up at 12.40 a.m. on June 20, 1977 by Cpl. Halidi (PW29 and item 6567 of Exhibit P14).

At 2.10 a.m. on June 20, 1977 A1/Insp. Lai telephoned DSP Ishak (PW13) to say that Nordin had fainted while being interrogated. DSP Ishak instructed him to send Nordin to the General Hospital immediately and to report this to Dy. O.C. Crime of 'C' Division (ASP Ahmad — PW14). A1/Insp. Lai reported to ASP Ahmad by telephone at 2.15 a.m. that Nordin had fainted in the interrogation room. At 2.10 a.m. A5/Joseph asked Police Driver Munir (PW15) to bring a van to A1/Insp. Lai's office. Munir drove the van to the CPB office. A person in a stretcher was put into the van and he drove it to the Casualty Ward of the K.L. General Hospital. In the van were accused 1, 2, 3, 4 and Cpl. Halidi.

According to Dr. (Miss) Lim (PW1) of the General Hospital, Nordin was brought to her at 2.50 a.m. on June 20, 1977 by two police officers, a Malay and a Chinese. She pronounced Nordin dead on arrival. In her opinion Nordin had died an hour or earlier before arrival. At 3.30 p.m. the same day Dr. (Hajjah) Sardar Jehan (PW2) performed an autopsy on Nordin. She found several injuries which may be summarised as follows:

(i) Entire back was bruised from nape of neck right down to buttocks and backs of thighs. She was able to count not less than 24 linear bruises, some overlapping one another over the back alone. The buttocks were badly bruised with deep parallel linear bruises.

(ii) There were bruises over chest, cheek and abdomen.

(iii) Deep pressure abrasions over both wrists.

(iv) Scrotum showed induration and abrasion on both sides.

(v) Multiple abrasions over the front of both thighs, knees and both ankles.

The internal examination showed:

(i) Blood clots under skin of scalp on both sides of head. On right side ran deep into temporalis muscle but no fracture.

(ii) Pus-like material found in the pelvis of both kidneys.

(iii) Gross haemorrhage of head of pancreas.

(iv) Stomach contained a few round worms otherwise empty.

(v) Small non-malignant tumour in livers.

(vi) X-rays showed no fracture.

In her opinion the external injuries were caused by blows struck with a rubber-hose; falls; punches and kicks. Injuries on wrists and ankles caused by handcuffs. Kick or fall on scrotum caused the testicular reflex. Punch in the abdomen caused the haemorrhage of the pancreas and he died soon afterwards because there was no blood in the abdomen. Cause of death was the cumulative effect of multiple blows, testicular reflex and lower resistance due to disease and possibly starved. Both Dr. Jehan and the Government Chemist (PW3) did not find any evidence that Nordin took drugs. There is evidence, however, that Nordin was not given any food from the time of his arrest at 9.20 a.m. on June 18, 1977 until he died at about 1.00 a.m. on June 20, 1977 except for a drink of water when he was at Pudu Police Station. The Police took photographs of the deceased Nordin one at 5.00 a.m. (Exhibit P1) and seven at 9.47 a.m. These photographs are not very helpful as they are in black and white. Nordin's father Hamzah (PW12) learnt of his son's death at 9.10 a.m. on June 20, 1977. He took the body home after the autopsy. He asked a friend Abdullah (PW11), a photographer at the Dewan Bahasa dan Pustaka to take 16 photographs in colour of his deceased son (Exhibit P4). These photographs show clearly the injuries described by Dr. Lim; Dr. Jehan; and the Police personnel at Pudu Police Station. They also corroborate the evidence of Noorazali and Khairuddin.

According to ASP Ahmad (PW14), the police employ two methods of interrogation which he described as normal or intensive. A *normal interrogation* is when a suspect is co-operative and gives information to the police and lasts about half an hour. An *intensive interrogation* is when the suspect does not co-operate with the police. The suspect is subject to continuous interrogation for up to 12 hours by a team of interrogators who change every 2 or 4 hours.

On the evidence, I found that on arrival at Cheras Police Station on the evening of June 19, 1977, Nordin was confronted by Noorazali and Khairuddin for the purpose of identification. According to the Segamat Police, Nordin was in good physical condition when he was handed over to the Cheras Police at 2.50 p.m. on June 19, 1977 but according to the Pudu Police he had bruises when he was handed over to them at 7.30 p.m. the same evening. Fellow detainee Lim corroborates the Pudu Police. Nordin had been in the custody of the Cheras Police during this period and the irresistible conclusion is that he suffered these injuries when he was in the custody of the Cheras Police and I so find.

I further find as a fact that between the hours of 9.30 p.m. (June 19, 1977) up to the time of his death in the early hours of June 20, 1977 Nordin was in the custody of the Cheras Police; that he was under intensive interrogation and that he was severely beaten up which resulted in his death.

The question then is whether the six accused or any one of them caused the death of Nordin. Noorazali's evidence is that he was taken out of the lock-up with Khairuddin and saw A3/Mahazan and A6/Raja Bahruddin beat up Nordin with the rubber-hose during the first interrogation. On July 7, 1977 at an

identification parade he identified A3/Mahazan. He identified A6/Raja Bahruddin in court but was not called upon to attend the identification parade of A6/Raja Bahruddin. He could not identify the others. Khairuddin corroborates the evidence of Noorazali as far as A3/Mahazan is concerned. Both said Cpl. Halidi was present but did not beat up Nordin. Khairuddin however, said that A5/Joseph was present during the first interrogation and beat up Nordin with the rubber-hose. There were others but he could not remember who they were. He could not remember if A6/Raja Bahruddin was present on this occasion. When he was brought in for the second interrogation of Nordin late that night Khairuddin said he saw accused 1, 2, 3, 4 & 5. He saw them take turns to beat up Nordin with the rubber-hose or punching or kicking him. Cpl. Halidi was there too but he did not beat up Nordin. Later he saw A6/Raja Bahruddin enter the room and punch Nordin in the stomach. At identification parades later, Khairuddin identified all six accused and Cpl. Halidi. Even the defence conceded that the identification parades held were impeccable. Both Noorazali and particularly Khairuddin were cross-examined at great length. Both are young (aged 18 & 19 years at the trial). Noorazali is the son of a Sgt. at the Police Depot Kuala Lumpur and Khairuddin the son of an Imam. I observed their demeanour in court and am satisfied that their evidence were substantially the truth. Neither implicated Cpl. Halidi although he took an active part in all the proceedings. There were other police officers but they refrained from pointing their fingers at them except against the police driver Munir.

As Cpl. Halidi was present during both interrogations of Nordin he was in the best position to say who inflicted the injuries on the deceased. He was however not called as a witness by the prosecution. I have given this matter my serious consideration and in particular whether I should invoke the presumption under section 114(g) of the Evidence Act. On a review of the entire evidence of the prosecution's case, however, I find that not a single police officer at Cheras has given evidence against any of the six accused persons and I can only conclude that Cpl. Halidi, if called, would be a most reluctant witness to testify against his superior and brother officers.

There is, however, the independent and direct evidence of Noorazali and Khairuddin that all six accused persons assaulted the deceased. All the six accused persons were identified at identification parades. A1/Insp. Lai and A3/Mahazan were identified by the Pudu Police as having taken out Nordin from Pudu Police Station. This evidence is corroborated by Entry 5006 in the Station Diary Exhibit P16. Entry 5007 of Exhibit P16 further shows that A1/Insp. Lai; A2/ASP Liew and A3/Mahazan were conducting an interrogation at the CPB office from 9.30 p.m. that night. There is the evidence that A5/Joseph took out Khairuddin from the Cheras Police lock-up at 9.20 p.m. the same night — Entry 6556 in Exhibit P14. And finally there is the evidence of P.C. Munir who said that accused 1, 2, 3, 4 & 5 were present when he took the deceased to the General Hospital. I find as a fact that all six accused persons have been identified as the persons who caused the death of Nordin.

It was contended that the prosecution had failed to adduce evidence of common intention in this case on the grounds that the accused were not acting in concert and the non-existence of a pre-arranged plan. True there was no evidence that the six accused persons held a meeting at which they decided to cause the death of Nordin. "As has often been observed, it is difficult if not impossible to procure direct evidence to prove the intention of an individual. In most cases it has to be inferred from his act or conduct or other relevant circumstances of the case": see *Mahbub Shah* v. *King Emperor.*[1]

In the instant case one need only confine to the incidents between 9.30 p.m. (June 19, 1977) and 2.00 a.m. (June 20, 1977); the so-called second session of the interrogation of the deceased. A1/Insp. Lai as Head of the CPB was in charge of the interrogation. There is evidence that Nordin denied from the very beginning that he was involved in any house-breakings. That was during the first interrogation which concluded at 7.30 p.m. When the interrogation was resumed at 9.30 p.m. the same night Nordin again denied all allegations. Following police procedure, he was treated as unco-operative whereupon intensive interrogation commenced. That meant he was to be interrogated continuously by relays of officers. This in fact took place. But the interrogation was accompanied by beating him up. There was ample evidence of the beating up, mostly with a rubber-hose. The accused persons used the same rubber-hose by turn. He was strapped to the window and the beatings continued. All the six accused persons took part and although not all six were present throughout, the fact remains that they took turns until Nordin collapsed when accused 1, 2, 3, 4 & 5 were present. They were all obviously acting in concert and their common intention was to beat up Nordin until he confessed to his alleged crimes. They in fact beat up a 16 years old boy continuously for four hours until this boy died. They were experienced police officers and knew what they were doing. I am satisfied in all the circumstances of this case that there is ample evidence here to invoke the provisions of section 34 of the Penal Code.

At the close of the case for the prosecution, I was satisfied that:

(i) Nordin died when he was in police custody;

(ii) He died as a result of injuries inflicted on him during interrogations by the police;

(iii) He was under intensive interrogation at the time;

(iv) All six accused persons took part in the intensive interrogation;

(v) All six accused persons caused the death of Nordin; and

(vi) All six accused persons were acting in furtherance of their common intention to cause the death of Nordin,

and held that the prosecution had made out a *prima facie* case and called upon all six accused persons to make their defence.

Defence of A1/Insp. Lai:

He was first informed of Nordin's arrest by telephone. He went to Pudu Police Station at 9.20 p.m. with Cpl. Halidi and A3/Mahazan and took Nordin to Cheras Police Station for interrogation. Nordin was very unco-operative so he proceeded to interrogate Nordin by turns with accused 2, 3, 4 & 5. Except for A2, accused 3, 4 & 5 were under his command. He said that Nordin asked for drugs and when he was refused he became violent banging his handcuffed hands on the bench and kicking his legs. He tried to run away so his legs were cuffed to prevent him from running. On his instructions, Cpl. Halidi brought in Khairuddin several times during the interrogation. He did not beat up Nordin nor did he see anyone beat Nordin during his presence. He denies that Nordin was ever handcuffed to the window. Nordin first collapsed at 12.30 p.m. He was revived after 20 minutes of artificial respiration but collapsed again after 10 minutes. Nordin revived a second time after 20 minutes artificial respiration but soon collapsed for the third and last time. He and others present tried artificial respiration for a further 40 minutes and when there was no response he reported to his commanding officer who ordered him to take Nordin to hospital. He did not see Nordin with any injuries as Nordin was fully clothed during interrogation. He attributed the injuries on Nordin to his falling off the bench several times. He admitted that Nordin was under intensive interrogation. The only information he had against Nordin was that given by Noorazali and Khairuddin that Nordin was a member of their gang. The information he wanted was where the stolen goods were concealed or disposed of. He said that Khairuddin lied and was not worthy of credit. To prove this he said Khairuddin lied when he said that on the morning of June 20, 1977 he was taken to the interrogation room and confronted by all the six accused and warned not to speak about what had happened to Nordin during the night otherwise he would not be released from detention. This was before he was taken to see DSP Ishak and later for his statement to be recorded by Insp. Bahwandi (PW22) at 1.30 p.m. on June 20, 1977. He called four witnesses — DW7, Prosecuting Officer at Sessions Court Kuala Lumpur who said that A1/Insp. Lai was in court for a case on June 20, 1977, DW8 — A Senior Investigation Officer of Petaling Jaya who said that Khairuddin was in Petaling Jaya Court on June 20, 1977. DW11 — Supt. Kulasingam who said he attended the funeral of a police officer on June 20, 1977 between 10-11 a.m. and saw A1/Insp. Lai there and subsequently at his office at about 1.00 p.m. the same day. DW12 — P.C. Hashim who said that he took Khairuddin to Petaling Jaya Court at 7.50 a.m. on June 20, 1977 and brought him back to Cheras Police Station at 12.20 p.m. the same day. He also relied on the Lock-up Diary Exhibit P14 (Entry 6577) which shows that Khairuddin was taken out of the lock-up at 7.30 a.m. and his official diary Exhibit D21 which shows he was at the station from 8.30 a.m. to 9.00 a.m. and did not return to the station until 2.30 p.m. that day.

It might well be that Khairuddin was confused as to the times, since DSP Ishak and Insp. Bahwandi commenced investigations that same night. The evidence regarding the threat arose out of cross-examination and I have no reason to doubt that it was in fact issued by the accused. There was delay in the investigation of this case and the investigation itself could have been more thorough. The photographs taken of the deceased by the police showed little of his injuries and but for the fact that deceased's father caused colour and detailed photographs to be taken in memory of his son, the medical evidence could have been confusing even contentious. In fact it was the defence case that the matter was going to be hushed up.

It was also suggested that both Noorazali and Khairuddin had a grudge against A1/Insp. Lai as both had been under detention for a week during which period they were interrogated several times and also beaten up with a rubber-hose by the accused. Even allowing for this, the evidence they gave has been proved to be substantially true and only the matter of identification remains. A1/Insp. Lai was the head of the branch and was personally in charge of the interrogation of Nordin. He himself interrogated Nordin several times that night. I cannot believe that he was completely unaware that Nordin was being beaten up. I find that his defence has not raised a doubt as to the truth of the prosecution case.

Defence of A2/ASP Liew:

He is an Investigating Officer at Cheras but not attached to the CPB. On June 19, 1977 he went to the station at 8.45 p.m. to catch up with his paper work. At about 9.30 p.m. he went out for a breather and saw A1/Insp. Lai's car parked in front of the CPB office. He went to look for A1/Insp. Lai as he wanted to discuss about certain investigation papers which he had taken over from Insp. Lai. He saw Insp. Lai in the interrogation room with A3/Mahazan and Cpl. Halidi questioning Nordin. He interrupted Insp. Lai and asked him to see him at his office. He returned to his office and continued with his work. Insp. Lai saw him about the investigation papers at about 10 p.m. for about 20 minutes. When he finished work at 11.00 p.m. he saw that Insp. Lai was still in the interrogation room with A3/Mahazan; A5/Joseph; P.C. Munir; DPC Ong; Khairuddin; Cpl. Halidi and two or three others. He took over the interrogation from Insp. Lai for 5 or 10 minutes and then left with Insp. Lai for a drink. About 20 minutes later he returned with Insp. Lai to the interrogation room. He saw A4/Harris holding Nordin who appeared to be violent. Nordin was jumping and he fell down. A4/Harris put Nordin back on the bench and then Nordin tried to run away so Insp. Lai gave instruction to cuff his legs. He remained for 2 or 3 minutes and left to see how a charge sheet was being drawn up. He returned later to the interrogation room. By this time he saw that Nordin looked restless, perspiring and breathing heavily. After being interrogated for about 30 minutes Nordin collapsed. The rest of his evidence after this is similar to A1/Insp. Lai and Khairuddin. He denied assaulting Nordin. He did not see anyone assault Nordin when he was present but admitted that it occurred to him that Nordin had been assaulted. I had the opportunity of

observing his demeanour in the witness box. He appeared to me to be basically a truthful person. He is a university graduate and was a school teacher before he joined the police. He was new to police work then and was learning. He was the most senior police officer in rank present that night. He had nothing to do with the case but joined in to see how an intensive interrogation of a suspect was being conducted. I was satisfied that A2/ASP Liew was present during the interrogation but hold that his presence was occasioned by his inquisitiveness and that he was not acting in concert with the others. I therefore found him not guilty of the charge and acquitted and discharged him.

Defence of A3/Mahazan:

He joined the police in 1969 and has been a detective since 1972. He served in the Secret Societies Branch before joining the CPB at Cheras. He did not dispute the prosecution evidence up to the point when Nordin was first brought to Cheras. He said, however, that DSP Ishak interrogated Nordin on arrival and kicked the deceased two or three times on the shin. Then, he saw Cpl. Ismail (46150) strike Nordin several times on the back with a rubber-hose. Nordin refused to admit to his crimes, then Cpl. Ismail handed him the rubber-hose and he struck Nordin with the rubber-hose two or three times on his back and thighs "to make him talk". Nordin said nothing and DSP Ishak instructed him to take Nordin to the Pudu Police Station. DSP Ishak left and then Cpl. Mokhtar picked up the rubber-hose and struck Nordin on the thighs two or three times. He then took Noorazali and Khairuddin to the lock-up and on his return he saw Cpl. Ismail and Cpl. Mokhtar beating up Nordin with the rubber-hose, one held the handcuffs and the other beating up. He then took Nordin to Pudu Police Station. His version of the second interrogation is that it was P.C. Munir (PW15) who beat up Nordin with the rubber-hose followed by DPC Ong, Insp. Nik and others whom he cannot remember. His job was only to question Nordin but he did "persuade" Nordin that if he did not admit to his crimes he would be beaten up some more. He also promised Nordin that if he returned the goods he would not be charged in court. Nordin replied that he did not break into any house and that Noorazali and Khairuddin were framing the charge against him. During interrogation Nordin asked for a drink of water. A1/Insp. Lai said not to give any water. He then saw Nordin go limp and collapse.

A3/Mahazan's version then is that he beat up Nordin during the first interrogation only. He denied beating Nordin during the second interrogation although he admitted that whilst he was interrogating Nordin, four or five other police personnel beat up Nordin. He said that Nordin was never beaten up when A2/ASP Liew and A1/Insp. Lai were present. He also said that accused 1, 2, 4, 5 and Khairuddin were present when Nordin collapsed. On his own admission, this is sufficient evidence to invoke the provisions of section 34 of the Penal Code against him as far as the assault during the second interrogation is concerned.

Defence of A4/Harris:

He was the Assistant Investigating Officer on duty from 8.00 a.m. (June 19, 1977) to 8.00 a.m. (June 20, 1977). He was at Cheras Police Station from 10.00 p.m. As he had no cases of his own then, he went to the interrogation room of the CPB and saw Khairuddin and Nordin being interrogated by Cpl. Halidi; DPC Ong; P.C. Munir (PW15) and A5/Joseph. He joined in the interrogation because it was he who arrested Khairuddin. Nordin did not admit to committing house-breaking in answer to his questions whereupon DPC Ong, P.C. Munir and one or two others began beating him up with the rubber-hose. After a while he left. When he returned to the interrogation room a second time he saw that Nordin was trying to escape by the door as he was about to enter. He caught hold of Nordin who was handcuffed; pushed him to the long bench and rammed him (henyak) on it. On order of A1/Insp. Lai, Nordin's legs were cuffed. He then left with Insp. Nik to Jalan Pekeliling Police Station on another case and was away for about 1½ hours. When he returned to Cheras, he found that Nordin had fainted and was lying on the bench. He denied kicking or assaulting Nordin that night although he volunteered the information that he used force by slapping, kicking, striking with rubber-hose or making suspects perform pumping exercises 1000 times when interrogating them. He said this was regular police practice and he himself had used the rubber-hose on suspects many times but not that night. Finally he said that he was told that this case would be hushed up as the officers involved were performing their duty. On the face of his own admission, I find that he is in the similar position as A3/Mahazan is concerned in respect of the second interrogation.

Defence of A5/Joseph:

He went to Cheras Police Station at 9.30 p.m. that night to check the duty roster and to rest before going on duty at 2.00 a.m. (June 20, 1977). On arrival he saw A1/Insp. Lai; A3/Mahazan and Cpl. Halidi interrogating a suspect. A1/Insp. Lai then asked him to fetch Khairuddin from the lock-up. He knew Khairuddin because Khairuddin had taken him to arrest Noorazali. He brought Khairuddin to the interrogation room and remained there watching the interrogation. He then saw P.C. Munir pull up Nordin by the handcuff and beat him with a rubber-hose. Then P.C. Manaf took over. He then questioned Nordin but he refused to say anything. He was followed by A3/Mahazan. He promised Nordin drugs and water, if he would admit. He continued to persuade Nordin to admit to his crimes whilst the others beat him up. When he saw that Nordin tried to run away he caught hold of him. He held up Nordin's hands while he was being beaten up by the others. He did not beat up Nordin himself, although he admitted to pushing Nordin hard on to the bench. The gist of his defence is that neither he nor any of the accused beat up Nordin but others not in court did the beating. I find that on his own admission of holding the deceased so that others could beat him is sufficient evidence to invoke the provisions of section 34 of the Penal Code.

Defence of A6/Raja Bahruddin:

He is an administrative officer dealing with general welfare of police personnel, leave, pay and maintenance of records. On June 19, 1977 (Sunday) and June 20, 1977 (Monday) the police sports were held at the Merdeka Stadium. He was on duty there during both days. When the games were over at 6.45 p.m. on June 19, 1977 he dropped in at Cheras Police Station to report on his movements and check on messages before going home. He was wearing sports gear. A3/Mahazan corroborates him on this. He went to the interrogation room of the CPB as it was nearest with telephone and saw A3/Mahazan; Cpl. Ismail and Cpl. Halidi with a suspect. A3/Mahazan reported that he had just returned from Segamat. After using the telephone he was on his way out when he asked the suspect where he came from and the suspect said Cha'ah. He left, returned home, had dinner with his wife (DW10). They had been married six months then. After dinner he watched television whilst his wife, a school teacher, prepared lessons for the following day. At about 8.30 p.m. he had a guest (DW9), a salesman who had sold him a second hand car air-conditioner about two weeks previously. It was not working properly and accused had complained to the salesman about it. The purpose of the visit was to collect accused's car. However, he remained in the house for an hour chatting about air-conditioners, cars and horse-racing. Accused did not leave the house that night. The next morning he walked to his office about ¼ mile away and took a police car to arrange for a tea-party and cocktails in connection with the sports. He did not know Noorazali or Khairuddin but it was his duty to check the conditions in the lock-up from time to time and whether lock-up sentries were doing their job. He of course denies beating up or punching Nordin at any time. Accused 1, 2, 3, 4 & 5 in their defence all said that A6/Raja Bahruddin was never present at any time during the second interrogation. I accepted his defence and found him not guilty of the charge and accordingly acquitted and discharged him.

True, Noorazali and Khairuddin both said that A6/Raja Bahruddin assaulted Nordin on two occasions, once during the first interrogation and once during the second interrogation but on a review of all the evidence I hold that in A6/Raja Bahruddin's case, it was a case of mistaken identity. They had probably seen him in the lock-up and mixed him up with somebody else. The defence suggested that A6/Raja Bahruddin was mistaken for DSP Ishak. I have seen them both in court and I agree they resemble each other. Now, the defence suggests that if Noorazali and Khairuddin gave false evidence against an innocent man like A6/Raja Bahruddin it was probable that they gave false evidence against A1/Insp. Lai and the others also, out of revenge for their own arrest, detention and assault. I have given this matter my very anxious consideration. As I said before, A1/Insp. Lai was responsible for the entire interrogation and the evidence of the prosecution and that of the defence also was that Nordin collapsed whilst under interrogation in the presence of A1/Insp. Lai. Nordin collapsed when he was being beaten up and as A1/Insp. Lai was present when Nordin collapsed he was therefore present when Nordin was being beaten up. As far as A2/ASP Liew is concerned, I hold that at most he was a curious onlooker who was new to the job and learning police methods of interrogation. He probably knew that what was being done was wrong but inspite of his senior rank, his inexperience restrained him from exercising his authority. In any event he was not directly connected with the CPB or the interrogation of suspects by that branch. He did take part but only as a pupil of the very experienced Insp. Lai. Accused 3, 4 and 5 however, have admitted that they were not only present at the interrogation but also took an active part. The only issue before the court is the identity of the persons who assaulted the deceased leading to his death and in particular whether the accused or any of them did assault the deceased between 9.30 p.m. to midnight of June 19, 1977. On a review of the entire evidence I am satisfied that accused 1, 3, 4 & 5 did act together in assaulting the deceased that caused his death.

However, the defence has clearly shown that the primary object of the interrogation was two-fold, viz.:

(i) To obtain a confession from Nordin that he committed house-breaking offences; and

(ii) To induce Nordin to point out where the stolen property is deposited.

In order to obtain the confession and the information, accused 1, 3, 4 & 5 tortured Nordin, principally by beating him up with a rubber-hose which they claimed had often been used in the past but did not lead to the death of any person. I accept the contention of the defence that what the accused persons did was not with the intention of causing the death of Nordin. On this finding I held that the lesser offence under section 330 of the Penal Code read with section 34 of the same Code has been disclosed. In accordance with section 169 of the Criminal Procedure Code I found accused 1, 3, 4 & 5 guilty under section 330 of the Penal Code and convicted them:

Sentence:

In passing sentence I took into consideration the fact that all four accused are police officers. They were all doing their duty and in the context of conditions in Kuala Lumpur where robberies and housebreakings are a daily occurrence the police have a very difficult job to perform. They are all first offenders and Insp. Lai in fact has had a distinguished police career. But the police also have a duty to perform to protect the innocent. In this particular case all the evidence, except for the accusations of Noorazali and Khairuddin, point to the fact that Nordin is innocent in view of his age; absence from Kuala Lumpur except for very brief periods; his job as a frog-catcher in Cha'ah (at time of his arrest he had a fish-hook and torch-light bulbs in his pocket) which earned him good money; and that he withstood torture on an empty stomach for so long protesting his innocence. Above all, however notorious a suspect may be, there can be no justification for police torture. In assessing the sentence on each accused I took into consideration the part played by each of them and accordingly passed a sentence of:

A1/Insp Lai — three years' imprisonment.
A3/Mahazan — eighteen months' imprisonment.
A4/Harris — one year's imprisonment.
A5/Joseph — one year's imprisonment.

From the above judgment the appellants appealed and the Public Prosecutor cross-appealed to the Federal Court.

FEDERAL COURT.

Manjit Singh for 1st appellant.

Radzi Sheikh Ahmad for 2nd, 3rd and 4th appellants.

Jagjit Singh for 2nd appellant in cross-appeal.

Mah Weng Kwai (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Suffian L.P. (delivering preliminary judgment of the Court on April 17, 1980): We shall deal with these appeals by the first, third, fourth and fifth accused and with the cross-appeal by the Public Prosecutor in three sections.

Section 1

In section 1 we deal with the appeals against conviction by the first, third, fourth and fifth accused.

These appeals are only on facts, and in our judgment the learned trial judge had enough evidence before him which, if believed, would justify his finding the appellants guilty; and he found them guilty. In the circumstances we do not think it right to disturb his finding. Accordingly we dismiss these appeals — for reasons which we will give in writing later on.

So the convictions of the four appellants are upheld.

Section 2

In this section we deal with the cross-appeal by the Public Prosecutor against the acquittal of the second accused.

We are of the opinion that here too we would not be justified in disturbing the trial judge's verdict, and we accordingly dismiss the cross-appeal. This means that the second accused's acquittal stands. We will give our reasons in writing later on.

Section 3

In this section we deal with the sentences on the accused whose convictions we uphold.

The Police Force exists to protect the public from criminal elements, and are given wide powers of arrest, search, investigation and so on — to detect offenders, to collect evidence against them and to bring them to book. These powers are to be found in the Criminal Procedure Code and other laws enacted by Parliament, and welcomed by the people. The Police are expected to do their duty energetically and efficiently, and on the whole they do that — as witness the comparative peace and tranquillity that exist in the country. But one power the Police do not have, and it is most unlikely that Parliament and the people will give it to them, and that is power to assault and torture suspects in their custody, least of all power to kill. Parliament and the public expect the police to exercise their power in a civilized and humane way. Those who exceed their powers should not expect to be protected by the law.

In this case, on June 18, 1977 at 9.20 a.m. the Police arrested Noordin, a young boy of 16, son of an ex-sergeant of the Special Constabulary, on suspicion of being involved in a spate of housebreakings and thefts in the Datuk Keramat area, Kuala Lumpur. He was arrested in Johore in Chaah and taken to the Segamat Police Station. There was no complaint about his treatment in Johore. From there he was taken to the Cheras Police Station in Kuala Lumpur and then transferred to the Pudu Police Station, where he was beaten to death.

When he arrived at the Cheras Police Station, he was "in good condition". But when he arrived at Pudu Police Station, there were fresh bruises on his body, obviously acquired while he was at Cheras Police Station.

He was interrogated — and he insisted he was innocent. This was regarded as non-co-operation, and so he was subjected to what is known in the Force as "intensive interrogation", described as continuous interrogation for up to 12 hours by a team of interrogators who changed every two hours.

During the interrogation at Cheras Police Station beginning at 9.20 p.m. on June 19, 1977 he was hung from a window facing outwards handcuffed to the window grill in the manner of a crucifixion; he was completely naked; he was beaten with a rubber hose by a succession of police officers, including, the learned judge found, the four appellants. He struggled and screamed in pain, and shortly after midnight of June 19/20, he became lifeless. When his body arrived at the General Hospital at 2.50 a.m. the doctor who examined it pronounced it dead, death having occurred an hour or so earlier. A post-mortem examination the following afternoon revealed over 24 linear abrasions all over his body, caused by blows with a rubber hose, and by falls, punches and kicks. The doctor said that the cause of death was the cumulative effect of multiple blows, testicular reflex and lower resistance due to disease and possibly due to starvation also. There was no trace of drug inside his body.

During the 40 hours he spent in custody, he was given no food; and there was positive evidence that during the interrogation he asked for water, and was ordered not to be given any.

Such was the brutal treatment that the accused — and others unknown in the Force — saw fit to give this young boy who all along maintained his innocence and from whom they wanted to extort a confession or information. The learned judge sentenced the first accused (a Chief Inspector) to three years, the third accused to 18 months, and the other two accused to 12 months each.

Each of us, had we been trying this case, might have given more severe sentences, but sitting as a court of appeal, we interfere only if in our opinion

the sentences imposed by the learned trial judge were manifestly excessive or manifestly inadequate or he had proceeded on wrong principles. Counsel on behalf of the four appellants argued that the sentences on their clients were manifestly excessive, while Mr. Mah, Deputy Public Prosecutor, argued that the sentences, except the one on the first accused, were manifestly inadequate, and that in the public interest to show official disapproval of police brutality, they should be enhanced.

We have given this matter very anxious consideration. While agreeing with Mr. Mah that this is a very serious case and that Malaysia should not be allowed to develop into a police state, we do not think that the sentences on the four appellants are manifestly excessive or manifestly inadequate, and that the learned judge has proceeded on a wrong principle. In the circumstances we affirm the sentences.

But this should not be regarded as a precedent in future cases. Members of the Force who do their duty in accordance with the law will receive our and public support and encouragement; but those who treat suspects in a cruel manner can expect to receive only very severe punishments from the courts. Parliament and the public will not allow a Savak to be established here, bringing disrepute to those responsible for the government and for the administration of justice.

Abdul Hamid F.J. (delivering the judgment of the Court): Chief Inspector Lai Kim Hon, Detective Police Constables Mahazan bin Bidin and Harris bin Mohd. Husin and Police Constable Joseph Louis s/o David Victor, were convicted before Harun J. in the High Court in Kuala Lumpur on August 3, 1978 under section 330 read with section 34 of the Penal Code. They appealed against both conviction and sentence. The first appellant was sentenced to 3 years' imprisonment, the second to 18 months, the third and fourth to 12 months.

At the trial in the High Court two others, namely, Liew Yong Choon (second accused) and Raja Bahruddin bin Raja Borhan (sixth accused) were acquitted and discharged.

The first appellant submitted that the learned judge failed to consider (a) the truthfulness and creditworthiness of the evidence of Noorazali and Khairuddin and (b) whether the appellants' defence had created a reasonable doubt in the light of the acquittal of both the second and sixth accused. The grounds of appeal raised by the appellants are substantially the same.

The facts of the case are briefly as follows—

The first appellant was at the material time Head of the Crimes Prevention Branch at Cheras Police Station and the other three appellants were under his charge. In the course of police investigation into reports of theft in Dato Keramat area suspects were rounded up. Khairuddin (PW32) was arrested and this led to the arrest of Noorazali (PW31). At 9.20 a.m. on June 18, 1977 another suspect Nordin (deceased) a 16-year old boy was arrested in Johore. He was first taken to Chaah Police Station and later the same day to Segamat Police Station where he was kept in the lock-up. On the following day Nordin was handed to the Cheras Police, escorted there by the second appellant and Corporal Halidi. On arrival he was found to be in good condition. He had no injuries and did not complain of any sickness.

Shortly after arrival Nordin was taken to a room for interrogation. Both Khairuddin and Noorazali were called to identify Nordin. During the course of the interrogation the second appellant assaulted Nordin with a rubber hose on the buttock, waist and back of thighs several times and Nordin screamed in pain. The sixth accused also assaulted Nordin. There were other police officers in the room.

Around 7.30 p.m. on the same day Corporal Halidi and the second appellant took Nordin to Pudu Police Station to be kept in the lock-up. Corporal 67271 Krishnasamy who was on duty at the enquiry office examined Nordin and found several bruises on his back. P.C. 63136 Ismail who was also on duty at the Pudu Police Station confirmed that there were bruises and scratch marks on the back of Nordin in the area of the shoulder blades on both sides and the areas above and below the waist. Further confirmation came from Nordin's cell-mate, one Lim Choon Leng. He saw swelling and bruises on Nordin's back, buttock and back of thighs indicating that he had been beaten up.

Shortly after 9.00 p.m. the same evening Nordin was taken out from the Pudu lock-up by the first and second appellants and Corporal Halidi. Nordin was again interrogated and beaten up. He was seen hanging from the window with his hands cuffed to the window grill in the manner of a crucifixion. During the course of the interrogation Nordin's ankles were also cuffed. The first, second, third and fourth appellants were among those seen assaulting Nordin. Apart from being beaten with a rubber hose, Nordin was punched and kicked. Some time after 12 midnight and shortly before 1.00 a.m. Nordin collapsed. At that time the appellants were in the room. The handcuffs and the ankle-cuffs were removed and attempts were made to revive Nordin. He showed signs of regaining consciousness, but after a while he again collapsed. Nordin was taken to the General Hospital and pronounced dead on arrival. Medical evidence revealed that the deceased sustained multiple injuries consisting of bruises on his entire back. Many of them overlapped with both buttocks badly bruised. There were bruises on the thighs and chest. Injuries were also found over the ulnar border of right wrist consistent with having been caused by handcuffs. The other injuries were consistent with having been caused by blunt objects, falls, punches or kicks. The bruises were mainly caused by a rubber hose. The cause of death was shock from multiple injuries and testicular reflex. The medical evidence clearly shows that the deceased was cruelly and brutally assaulted.

We shall now consider the grounds of appeal raised by the appellants. The appeal was essentially on questions of fact. The appellants contended that the trial judge failed to direct his mind to the material contradictions disclosed in the evidence of Khairuddin where at the identification parade he identified the 1st appellant as the person who was present in the

room and not one of those who assaulted the deceased, whereas in open court during the trial he stated that the 1st appellant assaulted the deceased.

Khairuddin and Noorazali were the two main witnesses. The learned judge very carefully considered their testimony and had assessed their credibility. He accepted the testimony of Noorazali and concluded that Khairuddin's evidence was substantially the truth. Evidently the deceased sustained the injuries while in the custody of the Cheras Police with the first appellant as the head of the team of interrogators. The injuries were inflicted in the course of the intensive interrogation on two separate occasions, on arrival from Johore and on the same evening commencing shortly after 9 p.m. It went on without a break for approximately three hours until after midnight when the deceased collapsed and died shortly after. There was evidence to show that the first appellant went in and out of the interrogation room and was seen by Khairuddin beating the deceased. The first appellant was in the room when the deceased collapsed and so were the other appellants.

In assessing the evidence of Khairuddin, the trial judge considered the fact that Khairuddin and Noorazali were in Police custody and that he was warned shortly before his release not to reveal what had happened to the deceased.

Viewed as a whole it seems clear that the finding of fact made by the trial judge turned solely on the credibility of the witnesses. The trial judge heard the testimony of each witness and had seen him. He also had the opportunity to observe the demeanour of the witnesses. Discrepancies will always be found in the evidence of a witness but what a judge has to determine is whether they are minor or material discrepancies. And which evidence is to be believed or disbelieved is again a matter to be determined by the trial judge based on the credibility of each witness. In the final analysis it is for the trial judge to determine which part of the evidence of a witness he is to accept and which to reject. Viewed in that light we did not consider it proper for this court to substitute its findings for that of the learned trial judge.

The principle of law governing appeals in criminal cases on questions of fact is well established, in that the Appeal Court will not interfere unless the balance of evidence is grossly against the conviction especially upon a finding of a specific fact involving the evaluation of the evidence of a witness founded on the credibility of such witness.

In the instant case the learned trial judge very carefully analysed all the available evidence before him and made specific findings of fact founded upon that which he believed to be the truth. He also drew certain inferences from facts specifically found. In this respect we may form our independent view but we should only do so where the fact upon which the inference was drawn was either unwarranted or manifestly against the weight of evidence. That was not the case here. In considering the appeal before us we gave very careful consideration to submissions made by Mr. Manjit Singh, counsel for the first appellant, and Encik Radzi, counsel for second, third and fourth appellants. In our judgment there was no merit in the argument and we were in full agreement with the findings of the learned trial judge. We therefore dismissed the appeal against conviction.

As for the other ground of appeal it would suffice for us to say that the findings of the trial judge were also based on essentially questions of fact and we saw no reason to disturb such findings.

There is a cross-appeal by the Public Prosecutor against the acquittal of A.S.P. Liew in the court below. For reasons that we have stated earlier there is no reason at all why we should interfere with the findings of the learned trial judge. We therefore dismissed the cross-appeal.

In reply to submissions made by counsel for the appellants, Mr. Mah for the Public Prosecutor urged the court to substitute for the convictions of the appellants under section 330 of the Penal Code (voluntarily causing hurt to extort a confession) convictions under section 331 (voluntarily causing grievous hurt to extort a confession). The maximum sentence under the first section is seven and under the second ten years. At the same time Mr. Mah submitted that the sentences on the second, third and fourth appellants should be more than that imposed by the learned trial judge. We did not alter the convictions as submitted, though we agreed that the hurt caused to the deceased was grievous — because it would not be right for us to increase the sentences on the second, third and fourth appellants, without increasing the sentence of three years imposed by the learned trial judge on their superior, the first accused, as to which there was no appeal by the Public Prosecutor. In the event we affirmed the sentences on each of the accused, and for that purpose, in our judgment, convictions under section 330 suffice.

On the day following arguments, in a preliminary judgment the Lord President spoke at length on sentences, and there is no need for us to say anything more about them.

Order accordingly.

Solicitors: *Manjit Singh Dhillon & Co.; Radzi Sheikh Ahmad & Partners; Jagjit & Co.*

LEE CHI MIN & ANOR. v. SUPERINTENDENT OF LAND AND SURVEY DEPARTMENT, KUCHING

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) & Syed Othman F.J.) May 5 & July 3, 1980]

[Kuching — Federal Court Civil Appeal No. 168 of 1979]

Land Law — Subdivision of land — Lots to be surrendered to Government for open space — Title to lots issued by mistake without endorsement — Notice by Registrar to correct documents of title — Action by Director of Lands to enter special conditions — Application for endorsement to be cancelled — Sarawak Land Code (Cap. 81), ss. 123, 136 & 194 — Land (Control of Sub-division) Ordinance (Sarawak Cap. 82), s. 10.

The appellants had applied for sub-division of their land and permission was granted subject to the surrender of two lots to the State Government free of charge for use as an